

FIRST REGULAR SESSION

HOUSE BILL NO. 1025

97TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE KORMAN.

1985H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 392, RSMo, by adding thereto one new section relating to pole attachments.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 392, RSMo, is amended by adding thereto one new section, to be
2 known as section 392.620, to read as follows:

**392.620. 1. For purposes of this section, unless the context clearly requires
2 otherwise, the following terms shall mean:**

3 **(1) “Attaching entity”, any broadband provider, cable television provider, or other**
4 **entity that seeks to attach any equipment whatsoever to a pole without having ownership,**
5 **an easement, or a contractual right to do so;**

6 **(2) “Broadband”, all types of technology capable of providing high speed internet**
7 **access including, but not limited to, digital subscriber lines, cable modems, fiber optics,**
8 **fixed wireless, mobile, or cellular broadband, broadband over power lines, and WiMax**
9 **technologies;**

10 **(3) “Cable provider”, those who transmit information by wire, radio, optical cable,**
11 **electronic impulse, or wireless technology, but that do not provide broadband;**

12 **(4) “Landowner”, an individual or entity that owns the land upon which a pole is**
13 **situated whether or not such individual or entity owns the pole;**

14 **(5) “Pole”, a telecommunications pole or other pole capable of use by an attaching**
15 **entity whether or not such pole is currently in use for any particular purpose;**

16 **(6) “Pole owner”, an individual or entity such as a utility that owns a pole or has an**
17 **easement right to use a pole for some specified purpose.**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 **2. Beginning August 28, 2013, no attaching entity shall attach any equipment**
19 **whatsoever to any pole unless such attaching entity has obtained a contract in writing from**
20 **the pole owner designating the type of use the attaching entity may make of the pole, the**
21 **duration of such use, and a contract in writing from the landowner specifying the scope of**
22 **the easement necessary for pole maintenance. Such written contracts shall also specify the**
23 **consideration paid. Oral agreements made prior to the effective date of this section may**
24 **be enforced by courts or under subsection 4 of this section. After the effective date of this**
25 **section, an attaching entity may continue to make use of a written assignment of rights if**
26 **such assignment covers both use rights in the pole and easement rights for access to the**
27 **pole and if such an assignment of rights is proper based upon a written agreement between**
28 **a pole owner and a landowner.**

29 **3. If an attaching entity cannot obtain agreement from either the pole owner or the**
30 **landowner for pole attachments and the easement rights to maintain such attachments,**
31 **then an attaching entity may demand non-binding arbitration before the Missouri public**
32 **service commission. The commission shall determine pole attachment compensation in a**
33 **manner consistent with Federal Communications Commission regulations and the eminent**
34 **domain laws of this state.**

35 **4. Beginning August 28, 2013, if a landowner or pole owner questions the validity**
36 **of an existing pole attachment, then such person may seek binding arbitration before the**
37 **Missouri public service commission with regard to whether a pole attachment was proper**
38 **under the law of this state as it existed prior to the effective date of this section. The**
39 **commission's decision regarding injunctive relief or compensation shall be subject to de**
40 **novo review in circuit court.**

41 **5. This section shall not be interpreted to grant any power of eminent domain to**
42 **an attaching entity, or to preclude any remedy in tort for damages to landowner property**
43 **caused by pole installation, pole attachment, pole maintenance, or similar activities.**

44 **6. The commission may promulgate such rules or regulations as are necessary to**
45 **administer the provisions of this section. Any rule or portion of a rule, as that term is**
46 **defined in section 536.010, that is created under the authority delegated in this section shall**
47 **become effective only if it complies with and is subject to all the provisions of chapter 536**
48 **and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if**
49 **any of the powers vested with the general assembly pursuant to chapter 536 to review, to**
50 **delay the effective date, or to disapprove and annual a rule are subsequently held**
51 **unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted**
52 **after August 28, 2013, shall be invalid and void.**

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